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October 6, 2022

United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Attn.: Judge Rachel P. Kovner

Re: Kevin McCabe v. CVS Health Corporation
Case No. 1:22-cv-03116-RPK-RML

Dear Judge Kovner:

On behalf of the plaintiff, Kevin McCabe, I hereby respond to the text order dated October 4, 2022, which states, in full:

Reference is made to defendant's [14] letter. On September 1, 2022, defendant filed a [12] letter pursuant to the Court's bundling rule reflecting service of defendant's motion to dismiss. On September 15, 2022, plaintiff filed an [13] amended complaint apparently without defendant's consent and without requesting leave of the Court. *See* Fed. R. Civ. P. 15(a). Plaintiff shall file a status letter stating whether defendant had consented to the filing of the [13] amended complaint, on or before 10/7/22. If plaintiff did not have authority or consent to file the [13] amended complaint, plaintiff shall file a motion requesting leave of the Court to file its [13] amended complaint *nunc pro tunc*, on or before 10/7/22.

Mr. McCabe filed the Amended Complaint pursuant to Rule 15(a)(1) (and, specifically, subdivision (B) thereof), which states:

A party may amend its pleading once *as a matter of course* within:

(A) 21 days after serving it, *or*

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading *or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.*

Fed. R. Civ. P. 15(a) (emphases added). Because no responsive pleading had been served, the 21-day

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period was triggered by the filing of the dismissal motion on September 1, 2022.

Sincerely,

s/ Todd C. Bank

Todd C. Bank

TCB/bd